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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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AVAIL HOLDING LLC,

Civil Action No:  
19-cv-00117 (BMC)

*Plaintiff,*

-against-

FRANCES RAMOS; COMMISSIONER OF SOCIAL  
SERVICES OF THE CITY OF NEW YORK SOCIAL  
SERVICES DISTRICT; CREDIT ACCEPTANCE  
CORPORATION; CITY OF NEW YORK  
ENVIRONMENTAL CONTROL BOARD, NEW YORK  
CITY TRANSIT ADJUDICATION BUREAU;

Defendant Frances Ramos'  
Statement of Material Facts  
Pursuant to E.D.N.Y. Local  
Civil Rule 56.1

*Defendants.*

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Pursuant to E.D.N.Y. Local Civil Rule 56.1, Defendant Frances Ramos submits the following statement of undisputed material facts upon which there is no genuine issue to be tried in connection with its motion for summary judgment dismissing the Verified Complaint, and on her Counterclaims to quiet title and for reasonable attorneys' fees in this action:

1. Plaintiff Avail Holding LLC ("Avail") is a limited liability company organized under Florida Law, whose single-member James Frantangelo is domiciled in the State of Florida. (Verified Complaint<sup>1</sup> ¶¶ 2-4.)

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<sup>1</sup> The Verified Complaint is filed as ECF Docket No. 1.

2. Ms. Ramos is the record owner of real property located at 101-22 132<sup>nd</sup> Street, South Richmond Hill, New York 11419 (the “Subject Property”). (Ramos Affidavit ¶¶ 2-3.)
3. At all times relevant to this proceeding, Ms. Ramos has resided in and maintained sole possession of the Subject Property. (Ramos Affidavit ¶¶ 2, 11.)
4. On June 15, 2007, Ms. Ramos entered into a mortgage loan agreement with First Franklin Financial Corp., and Op. Sub. Of MLB&T Co., FSB (“First Franklin”) by executing a promissory note in the amount of \$392,800.00. (Verified Complaint Ex. D.)
5. The promissory note was secured by a mortgage between Ms. Ramos and Mortgage Electronic Registration Systems, Inc. as Nominee for First Franklin. (Verified Complaint Ex. C.)
6. On June 13, 2011, Plaintiff’s predecessor-in-interest FCDB FF1 2008-1 Trust (“FCDB Trust”) commenced a foreclosure action in the Supreme Court of New York, Queens County, on June 13, 2011 (the “2011 Action”). The 2011 Action was captioned *FCDB FF1 2008-1 Trust v. Frances Ramos, et al.*, and was assigned index number 14111/2011. (Newton Decl. Ex. A.)
7. As part of its verified complaint in the 2011 Action, FCDB Trust alleged that it “is now the sole, true and lawful owner of the said bond/note/loan agreement and mortgage securing the same.” (Newton Decl. Ex. A, ¶ 11.)
8. As part of its verified complaint in the 2011 Action, FCDB Trust unequivocally and explicitly “elected and hereby elects to declare immediately due and payable the entire unpaid balance of principal.” (Newton Decl. Ex. A, ¶ 7.)

9. In support of its motion for summary judgment in the 2011 Action, FCDB Trust submitted an affidavit by Timothy R. Hapeman, Assistant Vice President of AMS Servicing LLC (“AMS”). (Newton Decl. Ex. B, at 19.)
10. Mr. Hapeman’s affidavit, to which he was “duly sworn,” stated that AMS was the mortgage loan servicer for FCDB Trust, and that in that role, AMS maintained records concerning the subject loan on behalf of FCDB Trust. (Newton Decl. Ex. B, at 19-20.) He further stated that he has “personal knowledge” of how those business records are created and maintained. (Newton Decl. Ex. B, at 20.)
11. Mr. Hapeman’s affidavit further states that based upon his review of the business records maintained by AMS on behalf of FCDB Trust, FCDB Trust “was the holder and owner of the original note, allonges, mortgage and assignments of mortgage, prior to the instant action being commenced and remains the holder of same. In this regard, there was written assignment of the underlying note, and the physical delivery of same, to [FCDB Trust] prior to the commencement of the [2011] action, and the mortgage passed with the debt as an inseparable incident.” (Newton Decl. Ex. B, at 20.)
12. The 2011 Action was dismissed in January 2013 by the Supreme Court, Queens County upon a finding that FCDB Trust failed to comply with the pre-foreclosure notice requirements established in Section 1304 of New York’s Real Property Actions and Proceedings Law (“RPAPL”). (Newton Decl. Ex. C.)
13. The January 2013 dismissal order did not determine whether FCDB Trust had standing to bring the 2011 Action.
14. Another of Plaintiff’s predecessors-in-interest FRT 2011-1 Trust brought a second foreclosure action, *FRT 2011-1 Trust v. Frances Ramos, et al.* in Queens Supreme Court.

That action, which was assigned Index Number 705252/2013 was commenced on November 14, 2013, and dismissed in January 2015. (Ramos Aff't ¶¶ 6-7.)

15. Plaintiff then commenced a third foreclosure action in this Court, *Avail Holding LLC v. Frances Ramos, et al.*, on December 11, 2015. That action, which was assigned Docket Number 1:15-cv-07068-NGG-LB, was voluntarily discontinued by way of a so-ordered stipulation in March 2018. (Newton Decl. ¶¶ 14-16.)
16. Plaintiff commenced this action on January 11, 2019, more than six years after FCDB Trust commenced the 2011 Action. (Verified Complaint.)

Dated: June 4, 2019  
Jamaica, New York

/s/  
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